

**PREPARED STATEMENT OF MATTHEW M. AID BEFORE THE HOUSE
COMMITTEE ON GOVERNMENT REFORM, SUBCOMMITTEE ON NATIONAL
SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS**

Mr. Chairman, I appreciate the opportunity to appear before you today to testify about the recently discovered U.S. government historical document reclassification effort, which has been taking place at the U.S. National Archives since at least 1999, as well as offer some observations based on personal experience concerning the disturbing trend towards greater secrecy within the U.S. government.

THE HISTORICAL DOCUMENTS RECLASSIFICATION PROGRAM

Beginning in June 1999, and continuing unabated for almost seven years, a number of U.S. government agencies, including the Central Intelligence Agency (CIA), the Defense Intelligence Agency (DIA), and the U.S. Air Force, which reportedly acts as the executive agent for the U.S. Department of Defense, have been secretly engaged in a wide-ranging historical document reclassification program at the National Archives and Records Administration (NARA) research facility at College Park, Maryland, as well as at the Presidential Libraries that are also operated by NARA.¹

Since the reclassification program began, more than 9,500 formerly declassified documents totaling more than 55,500 pages have been withdrawn from the public shelves at College Park and reclassified because, according to the U.S. government agencies, they all had been improperly and/or inadvertently released to the public.² Many of the reclassified documents

¹ A more detailed examination of the background and history of the multi-agency historical document reclassification program, including examples of documents that have been reclassified, can be found in Matthew M. Aid, ed., Declassification in Reverse: The U.S. Intelligence Community's Secret Historical Document Reclassification Program, posted on February 21, 2006, located at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB179/>

² It should be noted, however, that we do not yet have comparable figures for how many documents have been withdrawn from the public shelves at the Presidential Libraries run by NARA.

have either been published in full as part of the State Department's Foreign Relations of the United States series or in the microfiche supplements to these publications, or are available on the CIA Records Search Tool (CREST) computer database of declassified documents at NARA. The government security personnel have also reclassified documents that had been previously sanitized to remove sensitive classified information or had been declassified pursuant to Freedom of Information Act (FOIA) requests by researchers.

Everything about the Pentagon and the CIA's historical document reclassification effort is a secret. To the best of my knowledge, the reclassification program has never been authorized by Congress, nor has any funding ever been appropriated specifically for this program by any congressional committee. Contrast this was the Department of Energy's parallel historical document security review program, which was duly authorized by Congress pursuant to the 1998 Kyl-Lott Amendment (Section 3161 of the National Defense Authorization Act for Fiscal Year 1999, entitled "Protection Against Inadvertent Release of Restricted Data and Formerly Restricted Data"), which was signed into law on October 17, 1998.

I am led to believe that the cloak of secrecy surrounding this reclassification program stems from the essential fact that it does not enjoy Congressional approval, and that the agencies involved have tried to "catch a free ride" on the coattails of the congressionally-approved DOE document review program. This raises serious questions as to the legality of the multi-agency reclassification program, as well as the closely related question of where the agencies involved came up with the millions of dollars required to fund this classified multi-year program.

The very purpose and intent of the multi-agency historical document reclassification program is also classified. There is a classified interagency Memorandum of Understanding (MOU) which: (a) lays out the underlying nature and purpose of the historical document reclassification program, and (b) governs the conduct of the reclassification effort at the National Archives. We understand that NARA is a party and signatory to this classified MOU. The National Security Archive has requested the declassification of this document pursuant to the Freedom of Information Act (FOIA). A copy of this document will be made available to this committee upon completion of the declassification review.

During its lifetime, the multi-agency document reclassification program adopted all of the attributes of a clandestine intelligence community program. Significant efforts were made to keep the program a secret and disguise its activities. According to newspaper reports, over \$1.0 million was spent to build a secure office suite for the government security screeners on the fourth floor of the National Archives research facility at College Park, Maryland. How much additional funding was required for the hiring and training of the security screening personnel (most of whom were civilian contractors hired specifically for this program), the purchase of computer equipment and other indirect costs are not known.

The reclassification program even had its own "cover" arrangements. All of the withdrawal sheets placed in the NARA records boxes by the multi-agency security screeners

identified the organization withdrawing the document in question as the Inprocessing and Declassification Branch of the National Archives, and thus relieving the agencies of having to identify who was really reclassifying the documents. Following the tragic events of September 11, 2001, the multi-agency document reclassification program was disguised as part of NARA's "documents of concern" program, with all records boxes designated for security review containing on its exterior a bright yellow label stating: "Records Require Screening According to IG 1600-3." This refers to a NARA directive entitled Interim Guidance 1600-3, "Access to Archival Materials in the Context of Concern About Terrorism," which provided guidance to NARA staff concerning the protection of "Records of Concern" in the Archive's document collections. The latest cover used by the multi-agency security team is that the review is being conducted pursuant to the terms of Executive Order 12958, whose intent, as the Committee is fully aware, was to mandate declassification of historical records rather than serving as legal justification for a government-wide reclassification effort.

But the most serious aspect of the Pentagon and CIA's efforts to disguise the nature and extent of their activities was their success in keeping key aspects about of the program a secret from the Inter-Agency Security Oversight Office (ISOO). Every single document that was pulled from the public shelves at College Park and reclassified was determined to be "inadvertently released," that is to say, that the documents had never been properly declassified in the first place and had been released erroneously. This meant that the agencies conducting the reclassification effort did not have to follow the strict guidelines laid down by E.O. 12958, which requires a formal written reclassification notification to ISOO by the agency head making the decision. The Pentagon and CIA security screeners went around the strictures contained in E.O. 12958 by declaring every document they reclassified as having never been properly declassified in the first place, and therefore they never filed a single reclassification notification with ISOO during the 6+ years of the program! This behavior raises further serious questions in my mind about the legality of the reclassification decisions made by the agencies since the first documents were pulled from the public shelves in 1999.

The multi-agency reclassification teams have been using what can only be described as an "expanded and enhanced" interpretation of the exemptions contained in Executive Order 12958 in order to justify the reclassification decisions that they have made. Virtually all of the historical documents that have been reclassified to date are at least 25 years old or older, and as such, meet the test for immediate declassification pursuant to Executive Order 12958, as amended. Furthermore, not one of the reclassified documents contains any information which could conceivably fall under any one of the exemptions to E.O. 12958. For example, in removing virtually all of the previously declassified documents from the State Department intelligence files at NARA relating to an abortive 1956 balloon reconnaissance program over the Soviet Union called **Genetrix**, the Defense Intelligence Agency (DIA) claimed that the removed documents (including many newspaper reports concerning the program) had been removed pursuant to exemption 25X6, i.e. that they might: "Reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic

activities of the United States.” Needless to say, the public embarrassment to the administration of President Dwight D. Eisenhower caused by the very public failure of this reconnaissance program took place thirty years ago, and there is little if any conceivable possibility that the now reclassified State Department documents could cause the U.S. government any further grief beyond the damage already suffered.

And finally, the government security screeners have sought to make it more difficult for researchers to get the reclassified documents opened up in the future through the Freedom of Information Act (FOIA). As little information about the removed document is contained on the withdrawal sheet, usually omitting such information as the originator of the document or the nature of the document. Moreover, all of the document withdrawal sheets placed in the records boxes since 2001 deliberately do not disclose the identity of the government agency reclassifying the document, or the legal rationale for the document’s removal.

DROWNING IN A SEA OF SECRECY

Is the above-described multi-agency document reclassification program just the tip of the iceberg? Sadly, I fear that the answer is almost certainly “Yes.”

It now seems clear that the multi-agency historical document reclassification program is symptomatic of a larger and more pervasive ailment afflicting the U.S. government. The ailment, put simply, is that declassification has slowly but surely been dying in America since the late 1990s, with the process having accelerated noticeably since 2001. It is no secret that the leaders of the charge against greater openness in government, and the closely related issue of declassification of government records, have been the Department of Defense and the U.S. intelligence community.

The open opposition within the CIA’s Clandestine Service to greater transparency and openness in government is reflected in an unclassified article published in 2001 in the CIA’s in-house journal Studies in Intelligence, wherein the author, N. Richard Kinsman, a veteran Clandestine Service officer, argued that declassified historical documents that had appeared in the State Department’s respected Foreign Relations of the United States (FRUS) series of publication was damaging the CIA’s ongoing clandestine operations overseas, and specifically criticized officials in the State Department, the National Security Council, and the Justice Department who in a number of instances had approved the declassification and release of intelligence documents over CIA objections.³

Moreover, one could make a very persuasive argument that one of the reasons the U.S. government’s declassification effort has ground to a halt is because available manpower and

³ N. Richard Kinsman, “Openness and the Future of the Clandestine Service,” Studies in Intelligence, Fall/Winter 2001, No. 10. This unclassified document can be accessed at http://www.cia.gov/csi/kent_csi/docs/v44i5a07p.htm.

budgetary resources appear to have been redirected to the historical document reclassification effort since 2001. The longtime Washington Post reporter and noted intelligence historian Michael Dobbs wrote just a few days ago that: “The routine declassification of government records has ground to a virtual standstill over the past few years because of the diversion of resources to reexamining previously released documents.”⁴

⁴ Michael Dobbs, “Still Secret After All These Years,” Washington Post, March 12, 2006, p. B2.

The underlying evidence supporting this contention is compelling. The number of documents declassified by the U.S. government have declined from 126.8 million pages in 1999 to only 28.4 million pages in 2004 (the last date for which official statistics are available), a decline of 88% in just five years. The amount of money spent by the U.S. government on declassification also declined precipitously, dropping from \$233.1 million in 1999 to a mere \$43.3 million in 2004, a decline of 91.5% in just five years.⁵

The decline of declassification has been most marked at the Central Intelligence Agency (CIA). CIA spokesmen correctly point out that since 1997, the Agency has declassified and released to the public more than 28 million pages of formerly classified documents, with approximately 9.25 million pages of documents accessioned since 2000 to the CIA's CREST database of declassified documents housed in the Library at the National Archives' College Park facility. Unmentioned is the fact that the number of documents that have been added to the CREST database has declined from 2,082,776 pages in 2000 to 693,358 pages in 2005, a decline of 66.8% in relative terms.⁶ Moreover, the documents that have been released to the CREST database by the CIA since 2001 contain many more redactions than had been the case prior to 9/11, so much so that a large number of recently released documents in CREST are essentially worthless from a historical perspective.

The CIA has also since at least 2004 been quietly removing whole sets of previously declassified documents from the CREST database for reasons the Agency refuses to disclose. In the past, CIA officials have publicly stated that: "If a CIA document was mistakenly declassified by the CIA, the Agency will stand by that decision." This is, in fact, not exactly true. Between 1997 and 1999, the CIA released approximately 100 pages of formerly classified documents from three of its archival records groups (the CIA refers to its record groups as "Jobs") and placed them along with other declassified CIA records on the CREST computer database. After the author and a number of other researchers printed out materials from these three specific record groups, in 2003 and/or 2004 the CIA hastily withdrew these three Jobs from the CREST database, leaving no mark that they had ever been there. Repeated attempts by the author to get the CIA Declassification Branch to "re-declassify" these three CIA records groups through the

⁵ OpenTheGovernment.org, Secrecy Report Card: An Update, April 5, 2005, located at www.openthegovernment.org/otg/OTG_RC_update.pdf

⁶ Data from National Archives and Records Administration.

Freedom of Information Act (FOIA) have to date been unsuccessful.⁷

⁷ The now missing three CIA records Jobs are: 78S03377A, 78S00977R, and 78S00763R.

And finally, in recent years CIA security officials have removed documents from non-governmental historical repositories because they contained “inadvertently released” classified information. In February 2005, a team of five government security personnel, including three CIA officials, removed at least a dozen documents from the papers of the late Senator Henry M. “Scoop” Jackson that were held at the University of Washington’s Allen Library. The documents had allegedly been “inadvertently released” when Senator Jackson papers were deposited at the library ten years earlier.⁸

THE SENSITIVE BUT UNCLASSIFIED CONUNDRUM

Finally, I would like to offer some comments concerning the U.S. government’s attempts to keep so-called “Sensitive but Unclassified” (SBU) information out of the hands of the public.

First, from personal experience it would seem that much of the unclassified material that the U.S. government, especially the Pentagon, is currently trying to protect by cloaking them with the SBU marking is, for the most part, insignificant and harmless from a security standpoint. For example, the Pentagon has gone to great lengths to deny FOIA requests from members of the public for documents such as organization charts, staff directories, and telephone books. The Pentagon and the intelligence community argue that hostile foreign intelligence organizations mine these publications for information that could potentially damage U.S. national security.

It should be noted that at the height of the Cold War with the Soviet Union, all of these documents remained freely available to the public (and Soviet intelligence) with no discernible harm to national security. And while the Pentagon now routinely denies FOIA requests for these types of information, the Defense Department and virtually every other department and agency of the U.S. government currently make this material available to a number of commercial publishers, who in turn make the information available to the public through a variety of unclassified publications, albeit at considerable cost.⁹

⁸ Lara Bain, “CIA Seizes Sen. Jackson Papers,” Everett Daily Herald, February 15, 2005.

⁹ See for example the detailed organizational and personnel information for virtually every U.S. government agency that are contained in publications such as the Federal Executive Directory put out by the Carroll Publishing Co. in Washington, D.C., or the Federal

Second, the Defense Department and the military services have arbitrarily removed from public circulation unclassified information which could not cause any conceivable harm to U.S. national security. For example, in 2003 the U.S. Army's Center for Army Lessons Learned (CALL) at Fort Leavenworth, Kansas withdrew from public access all of its unclassified Lessons Learned reports concerning the conduct of operations in Afghanistan and Iraq after a series of critical newspaper reports were published using these materials.¹⁰

Third, the efforts of the Pentagon and the rest of the U.S. national security establishment to keep SBU information from the public, no matter how diligent, are bucking up against the inexorable tide of information proliferation that is now publicly available on the internet and other electronic media. Today, one can easily find on the internet reams of sensitive information concerning subjects ranging from nuclear, chemical and biological weapons design information, layouts of sensitive U.S. government military and intelligence facilities, "cookbooks" on how to make plastique high explosives, etc. The committee will no doubt understand if I do not provide any further details concerning where these types of information may be found.

Fourth, and finally, I believe that the imposition of a cloak of secrecy over such a broad range of formerly unclassified materials is ultimately wasteful, and can only serve to impede the conduct of day-to-day business inside the U.S. government. For example, the removal of unclassified documents and related indices from public access at the Nuclear Regulatory Commission (NRC) and the Federal Communications Commission in 2004 has only resulted in further slowing down the regulatory activities of these agencies by barring essential information from the companies and individuals who need the information in order to perform their business functions.

Thank you.

Yellow Book, published by Leadership Directories, Inc.

¹⁰ Fred Kaplan, "The Army Buries Its Mistakes," Slate, October 31, 2003, <http://www.slate.com/id/2090585/>